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Supreme Court of the United States

OCTOBER TERM, 1957

NO. 437

PRENTISS P. SWIFT, J. A. BECK and RAYMOND COMODOR, Trustees of the Congregation of Jehovah's Witnesses, Bethel Unit, Appellants,

v.

BOROUGH OF BETHEL, PENNSYLVANIA, a Municipal Corporation and HOWARD F. BRENHOLTS, Appellees.

Appeal from the Superior Court of Pennsylvania

MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL

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BOROUGH OF BETHEL, PENNSYLVANIA, a Municipal Corporation and HOWARD F. BRENHOLTS, Appellees.

MOTION TO DISMISS APPEAL

Appellee Borough of Bethel, Pennsylvania, and Appellee Howard F. Brenholts, by their counsel, hereby move that this appeal be dismissed, on the following grounds:

1. No substantial federal question is presented.

   [*Corporation of Presiding Bishop v. Porterville*, 90 Cal. App. 2d 656, 203 P. 2d 823 (1949); appeal dismissed 338 U.S. 805; rehearing denied 338 U.S. 939. Dismissal explained in *American Communications Ass'n. v. Douds*, 339 U.S. 382, 397, 398 (1950).]

2. The judgment rests upon adequate non-federal bases.

3. Questions concerning alleged unconstitutional exercises of administrative and judicial author-

ity under a state zoning variance statute, the validity of which has not been drawn in question, are reviewable only by writ of certiorari. [28 U.S.C. § 1257(3); *Zucht v. King*, 260 U.S. 174, 177 (1922).]

nted herewith is Appellees' Brief in Support of tion to Dismiss Appeal.

Respectfully Submitted,

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

A. Where a municipal zoning ordinance expressly permits churches to be erected in all one-family and multi-family residence districts but requires that all places of assembly, including churches, if located in one-family residence districts, meet proximity and off-street parking requirements, are such requirements, as applied to a church, contrary to the Fourteenth and First Amendments?

B. Where Appellants' proposed church location in a one-family residence district violates proximity and off-street parking requirements applied by a municipal zoning ordinance to all places of assembly, and Appellants' request for a variance from such requirements is refused by a municipal board of adjustment and state courts, pursuant to an unchallenged state statute, because (1) the proposed site is not unique and does not present "special conditions", and (2) there is no unnecessary hardship, and (3) the use would be contrary to the ordinance purposes in that it would intensify an acute traffic problem, does the refusal of the variance violate the Fourteenth Amendment?

C. Where a state court refuses to admit additional evidence offered by Appellants to show that other structures exist within the municipality contrary to the ordinance requirements, does such an evidence ruling constitute a denial of Fourteenth Amendment rights?

COUNTER-STATEMENT OF THE CASE

The Bethel Borough Zoning Ordinance, in Section 3, Article III (R. 47a), governing the R-1 One-Family Residential Districts, lists the permitted uses as follows:

"Uses:

One-Family dwelling;
Church;
Public or parochial school (certified by State Board of Education) . . ."

The same uses, including churches, are also permitted in all other one-family residence districts* and in all the multi-family residence districts (See Appendix 1, this brief).

In one-family residence districts only, all "places of assembly", including churches, are required to be at least ¼ mile from each other, and are required to have one car-space (300 square feet) of off-street parking area for each five seats of capacity.

The ordinance provisions for all multi-family residence districts permit churches but do not include any proximity or off-street parking requirements for churches in those districts (See Appendix 1, this brief).

Appellants' Jurisdictional Statement admits that their proposed location, in a one-family residential district, violated the proximity requirement in that it was 877 feet from the nearest other place of assembly—443 feet under the ¼ mile minimum (J.S. 8).

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* Sections 4 and 5 of Article III of the ordinance, which govern the R-2 and R-3 One-Family Residential Districts, contain provisions for churches identical to those in Section 3.

The fact that Appellants' proposal violated the off-street parking requirement was conclusively found by the state courts (R. 21a, 22a, J.S. 29) on the basis of competent evidence.

The proposed seating capacity was 85 seats (R. 63a, 139a) and there could be more (R. 76a). Under Article III, § 3 (8) of the zoning ordinance, 85 seats require 17 spaces or a total of 5100 square feet made usable for off-street parking. The board of adjustment found that the proposed site had available only 3900 square feet for off-street parking, enough to accommodate only 13 spaces (R. 139a).

The averment, at p. 15 of the Jurisdictional Statement, that the Bethel Borough Board of Adjustment "did grant a variance" from the off-street parking requirement, is not correct. No variance whatsoever was granted to Appellants by the board of adjustment decision (R. 144a).

As the basis for refusing to grant a variance to Appellants, the board of adjustment and the lower court found that the land in question was no different from other land in the area, presented no unique or unusual feature as to topography or use, and involved no hardship (R. 22a, 139a, 140a).

A detailed statement of the physical situation appears in the opinion of the Pennsylvania Superior Court.

The board of adjustment found that Appellants had purchased their land with full knowledge of the ordinance (R. 143a).

The lower court affirmed, in every respect, the board of adjustment's findings and refusal of a variance.

The Superior Court affirmed the findings and decision of the lower court in every respect.

ARGUMENT

I.

With respect to the validity of the zoning ordinance's proximity and off-street parking requirements for assembly buildings, as applied to Appellant's proposed church location in a one-family residence district, no substantial federal question is presented.

Even a total exclusion of churches from various kinds of residential districts has been held by this court to present no substantial question.

The instant appeal should be dismissed because this Court has clearly held that a similar, but more stringent zoning regulation of churches presented no substantial question. *Corporation of Presiding Bishop v. Porterville, appeal dismissed,* 338 U.S. 805 (1949).

This Court has specifically commented upon its dismissal of the appeal on the *Porterville* case, by stating:

> ". . . We recently dismissed for want of substantiality an appeal in which a church group contended that its First Amendment rights were violated by a municipal zoning ordinance preventing the building of churches in certain residential areas. Corporation of Presiding Bishop, C.J.C.L.D.S. v. Porterville, 338 U.S. 805, ante, 487, 70 S.Ct. 78 (1949)". (*American Communications Ass'n v. Douds,* 339 U.S. 382, 397, 398 (1949). The above comment by this Court was made in immediate connection with its statement that:
>
> ". . . When the effect of a statute or ordinance upon the exercise of First Amendment freedoms is

> relatively small and the public interest to be protected is substantial, it is obvious that a rigid test requiring a showing of imminent danger to the security of the nation is an absurdity . . ."

The effect of the Bethel ordinance upon the exercise of First Amendment freedoms is demonstrably milder than the effect of the ordinance in the *Porterville* case.

The Porterville ordinance did not merely regulate church properties when located in one-family residential districts, as does the Bethel ordinance here. The Porterville ordinance excluded churches entirely from the one-family residence districts, excluded churches entirely from the two-family residence districts and also excluded churches from the multi-family residence districts. It permitted churches to be located only in so-called "unlimited" residence districts. *Corporation of Presiding Bishop v. Porterville,* 90 Cal. App. 2d 656, 658, 203 P. 2d 823 (1949).

Appellant's Jurisdictional Statement, p. 23, with concern to distinguish the *Porterville* case, states that:

> "That [Porterville] case did not involve an entire municipality, as here, but the ordinance operated upon only a small portion of the city and prohibited churches only in one small residential area of the city."

This statement of Appellants nearly reverses the true situations.

The Porterville ordinance prohibited churches in all single and multiple-family residence districts, excepting only the "unlimited" classification, and thus came much

closer to involving the "entire municipality" than the instant ordinance.

The Bethel ordinance here allows churches in *all* residential districts. It subjects them to the above-described regulations in single-family residence districts only. In the multi-family residence districts, churches are allowed free of the proximity and off-street parking regulations (See Appendix 1, this brief).

The Bethel ordinance does not segregate churches from residences. On the contrary, it reasonably requires that "places of assembly", including churches, in one-family residential districts, be surrounded by residences.

In such residential districts only, the Bethel ordinance requires that assembly buildings be not bunched together and that they provide off-street parking space, because one-family residence districts do not have the protective facilities necessary to cope with a concentration of assembly buildings and the automobile problems which accompany their use.

The Porterville ordinance met the same problem in a more sweeping fashion by totally excluding all churches and other assembly buildings from all one-family and some multi-family residential districts. This Court held that the Porterville ordinance presented no substantial federal question.

The dismissal of the *Porterville* appeal by this Court provides, we submit, a fortiori authority to warrant the dismissal of the instant appeal.

The proximity and parking requirements are reasonable means for the protection of the public welfare.

The Bethel ordinance requirements that assembly buildings in single-family residence districts be separated by one-quarter mile and provided with off-street parking are reasonably directed, under the police power, toward combatting the harms to public health, safety and welfare which may arise in such districts.

A pertinent section of the Pennsylvania Borough Code provides that:

> ". . . Such [zoning] regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses . . ." Pennsylvania Borough Code of May 4, 1927, P.L. 519 § 3303; Purdon's Pa. Stat. Ann. tit. 53 § 48303.

Thus the Pennsylvania legislature has recognized that zoning requirements should be gauged to suit the type of district. Consideration of the protective facilities normally available in single-family residence districts is therefore relevant.

The fact that the Bethel ordinance permits churches to be erected in the multi-family residence districts free of the requirements applicable to the single-family areas provides evidence that the special problems of those single-family areas supply sound reasons for the proximity and parking requirements.

As the Superior Court succinctly pointed out, the fire-prevention, police and traffic facilities of sparsely

populated residential districts are not designed to handle close groups of assembly buildings, each populated by 25 or 50 or 100 or more persons (J.S. 31). (Appellants admit that the district involved here is sparsely populated [J.S. 9].) One obvious example of this point may be found in the fact that fire-company stations and fire plugs are normally spaced farther apart in such single-family residence districts than in other types of areas.

No case overthrowing a proximity requirement has been found. *Vine v. Board of Adjustment of Village of Ridgewood,* 136 N.J.L. 416, 56 A. 2d 122, 124 (1947) states that such a requirement is designed to avoid "traffic hazards in the area where pedestrians converge on the place of assemblage" and also the risk of fire and, in the case of a church, the noises and interruptions which would interfere with worship.

The size of Appellants' own church is not a controlling factor. The dangers would arise from the *interaction* of Appellants' auto and pedestrian activities with the concentration of people and traffic generated by other nearby assembly uses.

Appellants have contended that because the proximity requirement contains no size factor within itself, it could, under closely similar conditions, block a small church and yet allow a 100,000 seat stadium, presumably within the same single-family residence district.

This view ignores the fact that, in the Bethel ordinance, the proximity requirement is coupled with an off-street parking requirement which *is* scaled in accordance with seating capacity. Thus Appellants' imaginary stadium could be erected only upon a tract of land large

enough to provide the necessary off-street parking capacity; it could not be erected at random.*

Therefore, because the off-street parking requirement increases in proportion to the magnitude of the assembly use, it is clear that the zoning ordinance deals more stringently with the massive use than with the small one, and properly so.

In itself, the off-street parking requirement is not only desirable but necessary in the face of our present-day plague of automobiles. The Bethel ordinance space requirement of 300 square feet per auto is eminently reasonable, considering that it must provide for maneuvering, as well as storing, today's large autos.

The reasonableness of requiring one car-space for every five persons in potential attendance is also apparent.

The particular usefulness of the proximity and off-street parking requirements relates, of course, to the prevention of traffic's dangers to life and limb, a goal clearly approved by the Pennsylvania Supreme Court in *McSorley v. Fitzgerald,* 359 Pa. 264, 59 A. 2d 142 (1948), followed by the Superior Court here (J.S. 30).

One portion of the McSorley opinion is particularly appropriate in connection with off-street parking requirements in Bethel, a Pittsburgh suburb. The Pennsylvania Supreme Court said:

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*Appellants have also overlooked the fact that the Bethel provisions for one-family residence districts do not permit a large stadium as such but would permit only the minor sort which would be an accessory to a "Public or Parochial School". Article III, § 3 (R-47a, J.S. 3)

". . . It is unfortunate that many operators of automobiles habitually ignore the fact that highways are intended primarily for travel and not for the storage of vehicles other than by way of transitory stops for loading and unloading. The congestion caused by such misuse of the streets and by the ever-increasing amount of motor vehicle traffic has become a major problem of municipal administration, —a problem particularly acute in a city like Pittsburgh . . ." (359 Pa. at 268, 269)

The ordinance requirements were validly applied to Appellants' proposed church building.

Appellants' contention that the Bethel ordinance proximity and parking requirements cannot be constitutionally applied to their proposed church building amounts, we submit, to an assumption that church buildings, because of their worthy use, are exempt from zoning regulations, even those which are otherwise reasonable on their face.

Appellants' claim for absolute exemption is answered by *Poulos v. New Hampshire*, 345 U.S. 395, 405 (1953), with the words:

". . . It is a non-sequitur to say that First Amendment rights may not be regulated because they hold a preferred position in the hierarchy of the constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has definitely indicated the contrary . . ."

Among the decisions of this Court, Appellants seek to support their contention with the religious literature distribution cases.

However, there is a sound distinction between the instant case, which involves regulation only of the purely structural and physical aspects of the practice of religion, and the literature distribution regulations, which tended to prohibit, censor or tax, often at the individual discretion of public officials, the very activity of evangelism itself.

In *Cantwell v. Connecticut,* 310 U.S. 296, 307 (1940), this Court condemned a licensing requirement which rested "in the exercise of a determination by state authority as to what is a religious cause." In *Largent v. Texas,* 318 U.S. 418 (1943), a permit for the distribution of literature was issued only if the mayor deemed it "proper and advisable." *Lovell v. Griffin,* 303 U.S. 444 (1938) and *Schneider v. Irvington,* 308 U.S. 147 (1939) involved similar censorship powers.

Such unbridled powers are in sharp contrast to the ordinance proximity and parking requirements in the instant case, the application of which depend literally upon the use of a yardstick.

In the instant case there is no attempt to regulate in any fashion the conduct of worship or the pursuit of evangelism.

In this respect, the instant case differs sharply from cases like *Murdock v. Pennsylvania,* 319 U.S. 105 (1943); *Follett v. Town of McCormick,* 321 U.S. 573 (1944); *Jamison v Texas,* 318 U.S. 413 (1943), and *Martin v. City of Struthers,* 319 U.S. 141 (1943), which laid a tax or an absolute prohibition upon the very activity of religious evangelism.

The zoning ordinance provisions here touch only the physical location of the church structure and the

physical provision which needs to be made for the automobiles of the worshippers.

As to the physical factors of church location, the California court in the *Porterville* case pointed out:

> ". . . It is a matter of common knowledge that people in considerable numbers assemble in churches and that parking and traffic problems exist where crowds gather. This would be true particularly in areas limited to single family dwellings. There necessarily is an appreciable amount of noise connected with the conduct of church and 'youth activities.'" *Corporation of Presiding Bishop v. Porterville,* 90 Cal. App. 2d 656, 659, 203 P. 2d 823 (1949).

The Pennsylvania Superior Court in the instant case agreed that it is quite evident that the members of a church "could be killed just as dead going to and from church as going to and from a theater or a basketball game." (J.S. 32)

The same court pointed out the facts which show that the particular intersection at which Appellants here resolved to locate provided a specific illustration of the practical traffic problems which would be intensified by the addition of Appellants' use to the existing problem (J.S. 31, 32). These facts most strikingly underscored the special appropriateness of the off-street parking requirement in this particular location.

Appellants' citations, at p. 22 of the Jurisdictional Statement, also fail to support the view that there is no presumption of validity where a religious use is involved.

United States v. Carolene Products Co., 304 U.S. 144, 152 (1938), actually states, at the very page cited by Appellants, that "the existence of facts supporting the legislative judgment is to be presumed." The footnote on the same page does not discard the presumption.

Thomas v. Collins, 323 U.S. 516, 531 (1945) is a First Amendment case that actually states, at the very page cited by Appellants, that "judgment in the first instance is for the legislative body" subject to judicial review of constitutionality, of course.

Therefore, no cases have been found which contradict the presumption of validity in favor of legislation. As to zoning ordinances, the rule remains that "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

Thus, for example, the determination of whether the feasible separation of assembly uses should be ⅛ mile or ¼ mile is a matter properly left to the discretion of the legislative body.

Appellants' contention of exclusion by impossibility of compliance finds no support in the record. Appellants made no attempt to show that other assembly buildings were so scattered across the municipality as to prevent Appellants from finding a suitable site, because no such fact could be shown.

Appellants admit that one area of the Borough of Bethel is large (J.S. 17). Appellants' assertion that it is "built-up" is contradicted by their own admission that the district involved here is sparsely populated (J.S. 9).

A possible alternative location, away from other assembly uses, was pointed out (R. 123a-126a), and recognized by the Superior Court (J.S. 34).

Furthermore, in the multi-family residence district, Appellants were free to find a location without the necessity for observing any separation from other assembly buildings (Appendix 1, this brief).

The ordinance requirements were properly applied to Appellants, not because appellants proposed a religious use, but because their proposed use involved a "place of assembly" and the problems which accompany such a structure.

The violation of the proximity and parking requirements by Appellants' proposal is clear.

Violation of the proximity requirement by Appellants' proposal is admitted (J.S. 8).

Under the off-street parking requirements in Article III, § 3 (8) of the ordinance, at least 17 car-spaces, of 300 square feet each, were required for Appellants' 85 seat capacity. By reference to Appellants' own plot plan (Appellants' Exhibit B), which showed a maximum of 3900 square feet available in the rear of the proposed building, the board of adjustment, which was familiar with the property, found that only 13 spaces would be available (R. 139a).

Appellants' higher figures have been derived from their unreasonable inclusion of side and front-yard areas (R. 93a) necessary for use as driveways, as well as from the fact that their architect-witness used a car-space factor of 148 square feet (R. 102a), not the

300 square feet factor required in order to provide manuevering space.

The courts approved and adopted, as supported by the evidence, the findings of the board with respect to Appellants' violation of both the proximity and off-street parking requirements (R. 21a, 22a, J.S. 29).

Therefore, we submit that:

1. The ordinance requirements were valid on their face.
2. The ordinance requirements were validly appplicable to Appellants.
3. Appellants' proposal clearly violated those requirements.

Hence, the only real issue in the case was whether or not the situation and circumstances of Appellants' property entitled them to a variance under state law.

II.

The administrative refusal to grant a zoning variance and the judicial refusal to admit evidence of "other variances" do not involve the validity of any state statute and are therefore reviewable only by writ of certiorari.

Because Appellants' proposal could not meet the requirements of the ordinance, it was necessary for them to request that the board of adjustment grant a variance from those requirements. The power of the board of adjustment to grant a variance is governed by the following statutory provision:

". . . The board of adjustment shall have the following powers: . . .

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done . . ." (Pennsylvania Borough Code of May 4, 1927, P.L. 519 § 3307; Purdon's Pa. Stat. Ann. tit. 53 § 48307).

It is important to note that Appellants have not "drawn in question" the validity of this statutory provision nor the validity of its application to their situation.

Thus Appellants' claim of discrimination in the refusal of a variance is directed only toward an alleged unconstitutional exercise of authority under this unchallenged statute and is therefore cognizable only by way of certiorari, rather than appeal. *Zucht v. King*, 260 U.S. 174, 177 (1922).

Similarly, Appellants' complaint against the state courts' refusal to permit the introduction of evidence of "other variances" does not involve the validity of any statute. It too is a claim of "right . . . specially set up . . . under the Constitution," reviewable only by certiorari. 28 U.S.C. §1257 (3).

III.

Because the refusal to grant a variance to Appellants was based upon the fact that Appellants' land did not meet the criteria of the variance statute, the judgment rests upon an adequate non-federal basis and no substantial federal question is presented as to discriminatory administration.

The statutory variance provision quoted above, which allows a variance only where "owing to special conditions" full enforcement would work an "unnecessary hardship", has frequently been construed by the Pennsylvania Supreme Court.

The Superior Court here followed *Michener Appeal,* 382 Pa. 401, 406, 407; 115 A. 2d 367 (1955), which explained that the variance statute means that "a variance may be granted only where a property is subjected to a hardship unique or peculiar to itself," that "the plight of the owners" must be "due to unique circumstances" and that "the circumstances affecting the land . . . must be unique."

This construction of the variance statute by the highest court of the state is controlling. *Georgia Ry. & Electric Co. v. Decatur,* 295 U.S. 165, 170 (1935).

In the instant case, it was clear that Appellants' lot did not possess any unique aspects. The fact that there was nothing unusual, unique or special about Appellants' lot is unmistakably set forth in the testimony of Appellants' own witnesses (R. 71a, 72a, 84a, 85a, 98a).

Upon this strong basis—Appellants' own evidence—the board of adjustment found as a matter of fact (R. 139a) that the lot is no different from other land in the area and is not unique.

Appellants also failed to show any hardship connected with the land in question, which can always be used, or sold, for a non-assembly use in full compliance with the ordinance.

Moreover, the actual traffic problems confronting Appellants' proposed location, at an intersection, were such that a variance would have been at cross-purposes with the safety-protection intent of the ordinance. The Superior Court opinion describes these actual traffic factors in concise detail. (J.S. 31, 32)

For these reasons, the Pennsylvania courts properly held that Appellants' situation, standing on its own feet, simply did not meet the prerequisites for exemption by way of variance. These reasons related solely to the physical nature of Appellants' property. Appellants' religious practices or beliefs had nothing to do with the refusal of the variance.

Having failed to meet the variance requirements, which Appellants have not questioned, Appellants have no standing to claim discrimination.

Although Appellants have contended that "the usual and customary enforcement of the ordinance" was not to impose the proximity or off-street parking requirements upon church sites, the sole "example" which Appellants were able to supply in that connection was their reference to the St. Thomas More Catholic Church (R. 69a, 100a). That church, however, was

shown to be a temporary structure, which had never come before the board of adjustment in any respect (R. 129a).

Moreover, even if a variance had been granted to another church, the propriety of such a variance would have depended upon the particular facts and circumstances relating to the land of such other church. Such a variance would have provided no parallel or precedent relevant to Appellants' property.

The board of adjustment and the courts had no power to grant Appellants a variance because Appellants' land simply did not qualify for one, under the statute set forth above.

Because the statutory rules governing a variance have not been questioned, we submit that Appellants cannot insist that exemption should have been granted to them in violation of those statutory rules.

IV.

The refusal of the state courts to admit additional evidence, offered by Appellants to show the existence of other structures not in compliance with the ordinance, rests upon an adequate non-federal basis.

The propriety of the state courts' refusal to permit Appellants to introduce additional evidence on appeal from the board of adjustment is supported by Pennsylvania adjective law.

On appeal from a decision of a board of adjustment, the entertainment of additional evidence is a matter within the discretion of the lower court. The Pennsylvania Borough Code provides that:

". . . If upon the hearing of the appeal it shall appear to the court that testimony is necessary for the proper disposition of the appeal, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court, with his findings of facts and conclusions of law. . . ." (Pennsylvania Borough Code of May 4, 1927, P.L. 519 § 3307; Purdon's Pa. Stat. Ann. tit. 53 §48307)

This discretionary power of the lower court to hear or reject additional evidence is founded upon the fact that the board of adjustment exists to serve as a quasi-judicial hearing agency. Before the board, Appellants had their full day in court, with witnesses sworn, a verbatim transcript, cross examination and virtually unlimited opportunity to introduce evidence pertinent to the claims of discrimination which they had lodged in their appeal to that very board (R. 56a, 57a). Appellants used that opportunity to present evidence of the sole "exception" they could name, the temporary St. Thomas More Church.

Moreover, even if Appellants were entitled to a second day in court, the fact that the statutory variance depends upon the special characteristics of each piece of land means that evidence of other structures not in compliance with the ordinance would be irrelevant as applied to Appellants' land.

Since Appellants' own situation did not meet the variance statute requirement concerning a unique hardship, the existence of other variances could not show

discrimination without further proof that they each had been granted upon an insufficient basis.

Such collateral, ex parte relitigation of other cases, concerning other persons' properties, would be futile, whether undertaken to show Appellants' own entitlement to a variance or to show discrimination.

Because no parcel of real estate is exactly, or even substantially, the same as any other parcel of real estate, it is apparent that, even if variances had been granted for other properties, they could supply no parallel or common denominator with which Appellants' claim of discrimination could be measured.

For these reasons, the Pennsylvania courts have properly adhered to the rule of evidence that proof of other variances is inadmissable *Ventresca v. Exley*, 358 Pa. 98, 102, 56 A. 2d 210 (1948).

CONCLUSION

We submit that this appeal should be dismissed for want of substantiality.

Respectfully submitted

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APPENDIX 1

Zoning Ordinance of Borough of Bethel, No. 70-11-51:

"Article III . . . .

Section 6. *Multiple Family Residential District — R-4*

Uses. All uses permitted in R-1 District except Accessory Use (No. 2); plus, when public water and sewer service is provided, the following:

Group Houses

Garden Apartments

Areas. Lot lines shall be required in this District and the building or structures placed thereon shall comply with the following minimum requirements:

(1) *Lot Area per Family* — 3,000 square feet for each family dwelling unit provided within the building unit of multiple family use; 10,890 square feet for each one family dwelling or house.

(2) *Front Yard*—35 feet from the established right-of-way lines of the thorofare or street.

(3) *Side Yard*—50 feet on each side; when the rear of the building backs upon the side yard, 35 feet shall be provided.

(4) *Rear Yard*—35 feet from the rear of the main building to the accessory building or if no accessory building is built, the required depth shall be measured to the rear lot line.

(5) *Site Size* — one acre for Group Housing; two acres for Garden Apartments.

(6) *Off-Street Parking* — one car space of 300 square feet shall be provided for each dwelling unit included in the building.

(7) *Maximum Lot Coverage by Building*—25% total.

Height. The height of buildings and structures in this District shall not exceed 70 feet and contain more than six stories."